

REMARKS

Reconsideration of the present application is respectfully requested in view of the following comments.

1. In the Claims

Claims 1 and 2 have been canceled without prejudice or disclaimer in the amendment to the claims. Accordingly, the rejection of claims 1 and 2 as being unpatentable over U.S. Patent 5,714,115 (Speidel et al.) is moot.

The dependency of claims 5 and 6 have been amended in view of the cancellation of claims 1 and 2.

Applicants respectfully request entry of the amendments to the claims in the next Office Action.

2. Provisional Rejection of Claims 1-7 Due to Double Patenting

In the Office Action, claims 1-7 of the present application have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of co-pending Application No. 10/083,120. Applicants have carefully considered this rejection but it is most respectfully traversed for the reasons discussed below.

In the Action, it is acknowledged by the Examiner that co-pending Application No. 10/083,120 recites elemental ranges for use in a composition in a martensitic stainless steel, and because of such elemental ranges recited therein and the similarity of the ranges recited in the present application, the claims of the present application and those of Application No. 10/083,120 are not patentably distinct.

Applicants would like to point out that claims 4-7 of the present application relate to an austenitic stainless steel and not a martensitic stainless steel as recited in the claims of Application No. 10/083,120. Applicants submit that austenitic and

martensitic stainless steel types, in combination with the recited elemental ranges in connection therewith, possess markedly different properties from one another. Accordingly, the claims of the present application are patentably distinct from the claims in Application No. 10/083,120.

It is well-known that stainless steels can be classified into four types: (a) martensitic, (2) ferrite, (3) austenite, and (4) duplex type. Among these types of stainless steels, martensitic, ferrite and duplex types are magnetic. On the contrary, austenite type stainless steel is non-magnetic. Accordingly, the magnetic property of martensitic stainless steel and the non-magnetic property of austenitic stainless steel distinguishes the two types of stainless steel.

It is also well-known that austenitic and martensitic stainless steel possess different crystalline structures. Austenite is the face centered cubic form of steel. Not only is austenitic steel nonmagnetic, but it is easily work-hardened, strong and ductile. Contrariwise, martensite forms a body-centered tetragonal crystalline structure. Martensite can be hardened by heat treatment and is generally used in a hardened and tempered condition.

As indicated above, the claims of Application No. 10/083,120 each recite a martensitic steel having a composition including elements within specified ranges. It will be pointed out that the claims of the present application each recite a non-magnetic stainless steel and the application of the present invention repeatedly refers to the type of stainless steel of the present application as being austenitic. Thus, in view of the different in stainless steel types recited in the present application and Application No. 10/083,120, Applicants submit that the recited elemental ranges in combination with a non-magnetic stainless steel in the present application would not be obvious in view of the disclosure in Application No. 10/083,120.

In view of the observation of the differences between the present application and Application No. 10/083,120, Applicants respectfully request reconsideration and allowance of all the claims which are pending in the present application.

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Examiner: Daniel J. JENKINS
Art Unit: 1742

3. Conclusion

In view of the amendment to the claims, and further in view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that claims 3-7 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

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amendment 121603.wpd

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin J. Cassell", written over a horizontal line.

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